

Questions and Answers about the Real Estate Recovery Fund...

This is general information only and does not provide legal advice.

Do you believe you were cheated or that you lost money because of what a person licensed as a real estate or cemetery salesperson or broker (agent) did or didn't do or say?

If the agent was licensed by the Arizona Department of Real Estate, and your loss resulted from conduct that violated any of the agent's statutory duties (Title 32, Chapter 20, Arizona Revised Statutes, See Arizona Real Estate Lawbook at <http://www.re.state.az.us/print.html>), you may be entitled to reimbursement from the Arizona Real Estate Recovery Fund.

What is the Recovery Fund?

- The Recovery Fund (A.R.S. §§32-2186, *et seq.*) is administered under the direction of the Arizona Real Estate Commissioner.
- The Fund gets its money from a surcharge on license fees. No tax dollars are used.

Who can apply for money from the Fund?

A person who has done all of the following:

- Bought, sold or leased real property or a cemetery lot in Arizona, or hired a licensed agent or property management company to manage property in Arizona;
- Obtained a court judgment against the agent(s) (not just the brokerage company); and
- Was unable to collect the judgment.

You *cannot* file a claim if you or your spouse holds a real estate or cemetery license issued by any state, or held such a license at the time you incurred a financial loss.

What losses are covered by the Fund?

The money actually lost in a real estate or cemetery transaction including reasonable attorneys' fees and court costs up to \$30,000 per transaction. You must deduct the value of any property recovered, as well as any payment, settlement, insurance, tax credit or other offsets. Following are examples of losses that are covered and not covered:

Covered Losses

- Misappropriated earnest money deposit or down payment on a house
- Misappropriated security deposit, net rent income or money fraudulently withheld for repairs, utilities or mortgage payments on a property managed by an agent
- Some repair or construction costs required for damages or defects when an agent has materially misrepresented the condition of a property
- Losses caused by lack of security for a transaction when the licensee has actively misrepresented the security or financial condition

Uncovered Losses

- Lost profits and speculative losses
- Losses on property located outside Arizona
- Investment in notes, mortgages, limited partnerships or other securities, regardless of whether it is secured by real property
- Repair costs for defects when the purchaser was aware of the defect
- Punitive damages
- Post-judgment interest
- Damages from natural causes, vandalism, or tenant conduct or neglect
- Undocumented transactions or losses
- Money spent on lodging, meals, travel, photocopies or long-distance phone calls
- Commissions earned or payable in a transaction
- Losses exceeding out-of-pocket losses
- Losses by agents, their spouses or business associates and related entities

How can I get paid from the Fund?

In 2002, Arizona's Legislature passed House Bill 2008, effective August 22, 2002. As of that date, Notice to the Department at the commencement of your lawsuit is no longer necessary, and the method for applying to the Fund is different. See House Bill 2008 at <http://www.azleg.state.az.us/legtext/45leg/2r/laws/0058.htm>. You are now required to do the following:

- File a lawsuit in court against everyone you think is responsible for the money you lost.
- Get a judgment against the individual agents and all other responsible parties and their spouses (which may also include the other party to the transaction and the agents' brokerage companies).
- Exhaust all efforts to collect the money from everyone.
- Get an "Application for Payment from the Recovery Fund" form from the Department. Follow all instructions in the application, complete all sections, and attach all requested documents.
- File the application for payment by certified mail or hand delivery to the Recovery Fund Administrator at the Department's Phoenix Office and send a copy to the agent(s).

Until the law is amended, you must provide notice to the Department at the commencement of your lawsuit and apply directly to the superior court. The judge assigned to the case will determine whether your claim qualifies for payment. There is no form for applications to the court.

What happens to the agent if I am paid from the Fund?

The agent's license is terminated.

How can I get more information?

- Consult with your own attorney at your expense for any legal advice
- Contact the Recovery Fund Administrator at (602) 468-1414, Ext. 175